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May 4, 2020

United States of America v. Pierce, No. 18-cv-2412, 11-cr-576

Dear Judge Pauley:

On behalf of Earl Pierce, I respectfully write to join in the letter filed by counsel for Mr. Enrique Brito, advising the Court of the Second Circuit's decision in *United States v. Scott*, ___ F.3d ___, 2020 WL 1522825 (2d Cir. March 31, 2020), and adopt the arguments made therein. (Dkt. 11-cr-576, No. 712).

The Second Circuit in *Scott* held that manslaughter in the first degree under N.Y. Penal Law is not a "crime of violence" under the elements clause of the Armed Career Criminal Act ("ACCA") because the crime can be committed by omission, and not by force. As described more fully in Mr. Brito's letter, the same reasoning applies to attempted murder in the second degree; thus, it too is not a "crime of violence" under ACCA, or the similarly worded 18 U.S.C. § 924(c). (*Id.* at 2-3.) As the Court is aware, Mr. Pierce has made several arguments in support of his motion to vacate his conviction on Count Twenty-Four. One such argument is that one of the predicate offenses for this § 924(c) charge, as alleged in Count Eleven, was attempted murder in the second degree under N.Y. Penal Law, which is not a "crime of violence."

Respectfully submitted,

/s/ Benjamin Gruenstein

Benjamin Gruenstein

Hon. William H. Pauley III
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VIA ECF